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CALIFORNIA ENVIRONMENTAL QUALITY ACT

FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS December 20, 2006

**Corrective Action Remedy Selection
Redevelopment Property
Hitachi Global Storage Technologies, Inc.
5600 Cottle Road
City of San Jose, Santa Clara County, California**

The Findings of Fact and Statement of Overriding Considerations (FFSOC) below constitute the required findings and statement pursuant to sections 15091 and 15093 of the State California Environmental Quality Act (CEQA) Guidelines. The analysis was undertaken in support of the corrective action remedy described in the "Corrective Measures Study (CMS) Report, Redevelopment Property, Hitachi Global Storage Technologies, Inc.," dated August 31, 2006, that is incorporated by reference. The analysis determined that the following environmental issues are expected to be subject to significant impacts as a result of the Hitachi Campus and Mixed-Use Transit Village Project (Project): land use, hydrology and water quality, biological resources, cultural resources, hazards and hazardous material, transportation, air quality, noise, aesthetics, utilities, and energy resources. Additionally, cumulative and project-specific impacts were found for the following: cultural resources (historical buildings), traffic, air quality, aesthetics, noise, and biological resources (trees). While concurring with the findings made by the City of San Jose (City), the Department of Toxic Substances Control (DTSC) concluded the following relative to its assessment of impacts associated with the corrective action remedy for the Redevelopment Property at Hitachi Global Storage Technologies, Inc. (Hitachi).

Section I

Potential Environmental Effects that Can Be Mitigated to a Level of Insignificance

Land Use

Significant Impact: Construction activities would result in significant physical disturbance and could cause temporary disruption to adjacent land uses, including the existing residential uses to the west.

Findings: DTSC's corrective action remedy project is for characterizing and managing contaminated soil that may be encountered during building demolition and earthwork activities at specific locations during site redevelopment. Development parcels will already be disturbed by building demolition and other City-related Project activities when the corrective action project is implemented. Changes or alterations have been incorporated into the project that mitigate or avoid the significant effects on land use to a less than significant level. Such changes or alterations are within the responsibility and jurisdiction of the City and are not the responsibility of DTSC. Such changes have been adopted by the City and incorporated into the Project that mitigate or avoid the significant effects to the environment related to land use.

Facts: Incorporation of the mitigation measures described in the EIR, Section A, Land Use, would mitigate or avoid land use impacts to the extent possible. Land use mitigation and avoidance measures include submission of a Construction Management Plan for all projects within 1,000 feet of occupied residential uses approved by the Director of Planning, Building and Code Enforcement (DPBCE) to minimize impacts on surrounding sensitive land uses as well as future residences on the project site to the fullest extent possible. Measures include controls for dust, noise, water pollution control from construction, debris, air quality, construction hours, and equipment selection access routes for trucks.

Hydrology and Water Quality

Significant Impact: The Project would increase storm water runoff from the site above existing conditions and would exacerbate impacts to existing downstream drainage conditions in the Project area.

Construction of the proposed project could cause a significant temporary increase in the amount of contaminants in stormwater runoff during construction.

Storm water runoff from the Project site both during and after construction would contain higher amounts of urban pollutants, such as oil, grease, plastic, and metals that could impact water quality in local drainage systems receiving storm water runoff. The pollutants would occur in higher amounts than currently exist, due to increased development and activity on the site.

Findings: DTSC's corrective action project is for characterizing and managing contaminated soil that may be encountered during building demolition and earthwork activities at specific locations during site redevelopment. Development parcels will already be disturbed by building demolition and other City-related project activities when

the corrective action project is implemented. Changes or alterations have been incorporated into the project that mitigate or avoid the significant effects on hydrology and water quality. These changes or alterations are within the responsibility and jurisdiction of the City and are not the responsibility of DTSC. Such changes have been adopted by the City and incorporated into the project that mitigate or avoid the significant effects on the environment related to hydrology and water quality to a less than significant level.

Facts: Incorporation of the mitigation measures described in the EIR, Section C, Hydrology and Water Quality would eliminate or substantially lessen the significant impact to below the level of significance. The City adopted mitigation measures to addresses all possible hydrological effects resulting from the building construction that may be encountered during the entire project. Construction measures are within the responsibility and jurisdiction of the City and are not the responsibility of DTSC. Some of the measures pertaining to the Storm Water Pollution Prevention Plan for construction are applicable to the soil removal aspect of DTSC's corrective action project (compliance with soil stabilization practices, sediment control practices, sediment tracking control practices, wind erosion control practices, and non-stormwater management and waste management and disposal control practices) listed in the EIR in Section C, Water Quality, Construction Phase Measures, and in the Mitigation and Monitoring Control Program, would be applicable to DTSC's project for contaminated soil removal. Elements of the corrective action comply with the mitigation measures included in the mitigation monitoring plan. CMS Report Section 6.5, Soil Management Plan, lists procedures, and methods to be used for soils handling.

Biological Resources

Significant Impacts

Birds and Raptors Burrowing Owls: Tree removal related to Project construction could result in the "take" of special-status bird/raptor species, including Loggerhead shrike (California Species of Special Concern) and White-tailed kite (State Protected Species).

Burrowing Owls: Project construction could result in impacts to burrowing owls that could occupy suitable habitat on the Project site.

Pallid Bats: Removal of buildings or oak trees during the project could result in the loss of pallid bats, which could occupy suitable habitat on the Project site.

Findings: DTSC's corrective action project is for characterizing and managing contaminated soil that may be encountered during building demolition and earthwork activities at specific locations during site redevelopment. Development parcels will already be disturbed by building demolition and other City-related Project activities when the corrective action project is implemented.

Changes or alterations have been required in or incorporated into the project that avoid or mitigate the significant effects on the environment related to birds/raptors and burrowing owls and pallid bats. Such changes or alterations are within the responsibility and jurisdiction of the City and are not the responsibility of DTSC. Such changes have been adopted by the City and incorporated into the Project that mitigate the significant effects on the environment related to birds and raptors and burrowing owls to a less than significant level.

Facts: Mitigation measures have been incorporated into the Project as conditions of approval and will avoid or substantially lessen the impact to special-status bird/raptor species, burrowing owls, and pallid bats to a less than significant level.

EIR, Section D, provides mitigation measures that include avoidance of the nesting season to the extent possible for birds and raptors, preconstruction/pre-disturbance surveys, and nesting inhibition measures.

For the burrowing owl, pre-construction surveys for burrowing owls will be conducted prior to any soil-altering activity or development. Avoidance and eviction provisions outside the breeding season are included along with a final report of owls prior to grading commencement.

Surveys for roosting bats prior to tree removal or buildings are required, along with avoidance and safe eviction measures, and a report of pallid bats with protection measures are required prior to grading commencement.

Cultural Resources

Significant Impact: Project site development could result in a significant impact to buried cultural resources that could be present on the site.

Findings: DTSC's corrective action project is for characterizing and managing contaminated soil that may be encountered during building demolition and earthwork activities at specific locations during site redevelopment. Development parcels will already be disturbed by building demolition and other City-related Project activities

when the corrective action project is implemented. However, in the event soil excavation is necessary to remove contaminated soil under the CMS Report in order to meet Remedial Action Objectives (RAOs), impacts to archaeological resources could result.

Changes or alterations have been required in or incorporated into the project that avoid or mitigate the significant effects on the environment related to cultural resources. Effects will be reduced to a less than significant level with the application of mitigation measures that are required as part of the Project approval. Such changes or alterations are within the responsibility and jurisdiction of the City and are not the responsibility of DTSC.

Facts: Incorporating the mitigation measures described in the EIR, Section E, Cultural Resources, would eliminate or substantially lessen the potential significant impacts to below the level of significance. The City adopted mitigation measures for cultural resources to address possible effects to unknown archaeological resources resulting from Project development activities. Measures that would apply to the corrective action project include the provisions for work stoppage in the event resources are located, notification to the DPBCE, examination and consultation by a qualified archaeologist, proper handling and recording of resources located, including human resources, notification to the Santa Clara County Coroner, and proper disposition of remains pursuant to State law. A final report will also be prepared detailing the event and submitted to the DPBCE.

Hazards and Hazardous Materials

Significant Impacts:

Child Care and Residential Care Facilities: The construction and operation of a child care or residential care facility on the proposed site could result in the exposure of sensitive receptors to hazardous materials impacts in the event of an accidental release or upset.

Residual Chemical Concentrations: Residual concentrations of chemicals of particular concern present in soils on the site could expose future sensitive receptors to significant hazard impacts.

Chrysotile Asbestos: The presence of naturally-occurring chrysotile asbestos in the fill material on the site could result in significant impacts on construction workers and/or future residents of the proposed development.

Diesel/Project Emissions: The Project would expose future residents and commercial workers on the outer subareas of the site to emissions exceeding the Bay Area Air Quality Management District (BAAQMD) cancer risk thresholds of significance. The major chemical contributor to the estimated cancer risks is diesel particulate matter emissions from the emergency diesel generators on the site.

High-pressure Gas Lines: Because the project proposes buildings of two or more stories within the 250 foot setback, the project could result in safety hazards associated with the presence of high-pressure gas lines near the Project site.

Findings: DTSC's corrective action project is for characterizing and managing contaminated soil that may be encountered during building demolition and earthwork activities at specific locations during site redevelopment. Soils within identified and other redevelopment parcels where contamination is suspected will be sampled, characterized, and remediated in accordance with the Voluntary Cleanup Agreement entered into between Hitachi and DTSC. Changes or alterations have been required in or incorporated into the project that avoid or mitigate the significant effects on the environment related to hazards and hazardous materials. With the application of mitigation measures, required as part of the Project approval, effects will be mitigated to a less than significant level. These changes or alterations are within the responsibility of the City and not the responsibility of DTSC.

Facts: Incorporating the mitigation measures described in the EIR, Section F, Hazards and Hazardous Materials would eliminate or substantially lessen the potential significant impacts below the level of significance. The City adopted mitigations for Hazards and Hazardous Materials to address all possible hazards resulting from Project development and hazardous materials that may be encountered during the entire project. These mitigation measures include elements that are part of the CMS Report and comply with the residual contamination provisions in the Project Mitigation Monitoring and Reporting Program. Those items are included in the corrective action project description provided below.

The corrective action project includes Project redevelopment property area sampling and possible soil excavation and disposal. Soil excavation may be necessary to remove contaminated soil under the CMS Report in order to meet Remedial Action Objectives (RAOs). The CMS Report Soil Management Plan (SMP) project serves to identify contaminant levels that exceed RAOs and to remove contaminants during Hitachi redevelopment activities. Redevelopment activities include grading, utility installation and roadway demolition/construction. SMP activities include the following:

Using a California certified contractor and under the direction of a California registered geologist or engineer (the "Environmental Professional") will:

1. Sample areas identified in the Site Inspection/Sampling plan and other areas where contamination is suspected.
2. Maintain a field logbook during SMP activities to document observations, personnel on site, equipment arrival and departure time, and other vital project information.
3. Oversee some building demolition and when building slabs are being removed. Methods for field screening the soils will be employed, including use of a photoionization detector (PID) to screen for volatile organic compounds, testing for corrosives presence. The EP will also inspect pipe, tank, concrete pads, building foundation floors, and other structures areas as they are removed and/or demolished.
4. Test collected samples for analysis for volatile organic compound, total petroleum hydrocarbons for diesel and motor oil fractions, polychlorinated biphenyls, semi-volatile organic compounds, and metals.
5. In areas where remedial goals for soils are exceeded, soil will be excavated until visual or olfactory evidence of contamination has been removed; analysis of confirmation soil samples for relevant chemicals indicates that the risk based target concentrations (RBTCs), site-specific background concentrations for inorganic chemicals, preliminary remediation goals (PRGs), or California Human Health Screening Level (CHHSLs) (as appropriate) are met, or approximately 1,000 cubic yards of soil has been excavated. Further remedial actions may be indicated for areas that remain at concentrations above the soil remedial goals.
6. Excavated soils will be segregated and stockpiled on-site for characterization prior to off-site disposal at an authorized facility.
7. Confirmation samples will be collected from sidewalls and bottoms of excavations.
8. Decontamination procedures will occur prior to and after the removal activity has been completed using various methods in a pre-designated area on pallets or plastic sheeting. Decontamination wastes will be collected in separate, labeled

containers provided by Hitachi and transported to Building 042 at the site where disposal arrangements will be made.

9. Air monitoring will be the responsibility of the Contractor to measure particulate matter generated during the excavation and decontamination activities and for assessing appropriate personal protective equipment for on-site workers, implement dust control measures, and determine off-site impacts from activities.
10. It is anticipated that excavated soil classified as hazardous waste would be transported to the Kettleman Hills Landfill in Kettleman City, California.
11. Site restoration will be performed, and backfilling excavations will be the Contractor's responsibility.
12. A completion Report that documents all activities conducted pursuant to the CMS Report and certifying that all activities have been performed consistent with the CMS Report will be prepared and will be submitted to DTSC for approval.

Transportation

Significant Impacts:

The project would result in significant impacts associated with increased congestion at the following local City of San José intersections:

1. Cottle Road/Concord Drive
2. Cottle Road/Poughkeepsie Road
3. Great Oaks Boulevard/Via Del Oro
4. The project would result in significant impact to operation of the Cottle Road corridor and the SR 85/Cottle Road interchange.

Findings: DTSC's corrective action project is for characterizing and managing contaminated soil, including transporting some contaminated soils off-site that may be encountered during building demolition and earthwork activities at specific locations during site redevelopment. With respect to construction, the EIR concluded that temporary construction traffic would not result in significant impacts. DTSC's project will not exceed the 100 peak hour trips estimated in the EIR.

Changes or alterations have been required in or incorporated into the project that avoid or mitigate the significant effects on the environment related to transportation (congestion at specified locations above). With the application of mitigation measures, required as part of the Project approval, effects will be mitigated to a less than significant level. These changes or alterations are within the responsibility of the City and not the responsibility of DTSC.

Facts: As detailed in the EIR, Section G, the project will require mitigation measures to reduce impacts to a less than significant level through reconfiguration and/or improvements to the above-listed intersections.

Air Quality (Demolition and Construction)

Significant Impact:

Demolition and construction associated with Project would temporarily increase dust fall and elevate local levels of PM10 downwind of demolition and construction activities. This may impact nearby properties, particularly existing residential areas to the northeast, southwest, and west.

Findings: Changes or alterations have been required in or incorporated into the project that avoid or mitigate the significant effects on the environment related to air quality. With the application of mitigation measures, required as part of the Project approval, effects will be mitigated to a less than significant level. These mitigation measures have been adopted by the City. These changes or alterations are within the responsibility of the City and not the responsibility of DTSC.

Facts: DTSC's corrective action project is for characterizing and managing contaminated soil that may be encountered during building demolition and earthwork activities at specific locations during site redevelopment and other locations where contamination is suspected. During corrective action project activities, mitigation measures for dust resulting from soils within identified and other redevelopment parcels suspected of contamination, will be sampled, characterized, and remediated in accordance with the Corrective Action Consent Agreement entered into between Hitachi and DTSC. Dust controls are included in the CMS Report that comply with the required Project mitigations listed in the EIR, Section H. Those measures include a dust control plan, watering or chemical dust suppressant use, work stoppage during high winds (sustained at 25 miles per hour), wind fences, and track out prevention measures.

The EIR, Section H, Air Quality lists Specific Development Project Mitigation Measures for demolition and construction. These measures are incorporated into the Project and have been adopted by the City would reduce impacts to air quality. DTSC's CMS Report complies with mitigation measures identified in the EIR to lessen the impacts to air quality due to the Project, and demolition/ construction impacts to air would be reduced to a less than significant level. DTSC's corrective action project is a part of the larger redevelopment Project that the City has decided to undertake. Elements of the CMS Report comply with mitigation measures identified in the EIR that are designed to lessen air impacts due to demolition/construction.

Noise

Significant Impact: The site is exposed to noise levels exceeding what is considered satisfactory for residential land use according to the City's General Plan. Interior noise levels at the proposed residential units could exceed the City's and state's interior noise standard of 45 dBA.

The future residential uses on the site to the west and southwest of the 50 megawatt emergency generator would be exposed to intermittent noise levels exceeding what is considered satisfactory for residential land uses according to the City's General Plan and adopted Policy.

Findings:

Changes or alterations have been required in or incorporated into the project that mitigate or avoid the significant effects on the environment related to noise. Such changes or alterations are within the responsibility and jurisdiction of the City and are not the responsibility of DTSC.

Facts:

These changes are the responsibility of the City to implement pursuant to the mitigation monitoring plan adopted by the City. Incorporation of the mitigation measures described in the EIR, Section I, Noise, would eliminate or substantially lessen the significant impact to below the level of significance. The City adopted mitigation measures for noise to addresses all possible noise effects resulting from development activities that may be encountered during the entire project. Design-level noise analyses shall be completed for all proposed new residential development at the PD Permit stage to ensure the design would achieve an interior noise level of 45 dBA or less in all habitable residential areas, in accordance with the requirements of the State

Noise Insulating Standards in the California Building Code. Other measures include noise shields and sound rated windows, noise standards for generators, set back area requirements.

DTSC's corrective action project will temporarily elevate noise levels adjacent to the project site. Given the distances to sensitive receptors, these impacts are not anticipated to be significant according to the EIR, Section I.

Visual/Aesthetic (Lighting)

Significant Impact: The proposed project would have outdoor security lighting on the site, along walkways, and in entrance areas, and would also include standard pole lighting within the public street system. In addition, the proposed 10-acre public recreational park area on the northern portion of the site would include night lighting for the ball fields.

Findings: Changes or alterations have been required in or incorporated into the project that mitigate or avoid the significant effects on the environment related to visual/aesthetic-lighting. Such changes or alterations are within the responsibility and jurisdiction of the City and are not the responsibility of DTSC.

Facts: EIR, Section J provides mitigation measures for lighting for new residential and commercial development that shall be designed and operated in conformance with the City Council's adopted *Outdoor Lighting Policy*. In accordance with the Outdoor Lighting Policy, low-pressure sodium lighting will be required for most types of lighting fixtures in most locations on the site, and the fixtures will be directed downward to avoid spillover onto adjacent and proposed sensitive uses. These measures have been adopted by the City for the Project. Effects to visual/aesthetic resources will be mitigated to a less than significant level.

Utilities and Service Systems

Significant Impact: The Project would increase storm water runoff from the site above existing conditions and could exacerbate downstream drainage conditions in the Project area. The Project would require construction and installation of new storm drain lines to serve the proposed development as a result.

Findings: Changes or alterations have been required in or incorporated into the Project that mitigate or avoid significant effects on the environment related to utilities and service systems. Such changes or alterations are within the responsibility and

jurisdiction of the City and are not the responsibility of DTSC. Such changes have been incorporated into the Project by the City that mitigate or avoid the significant effects to utilities and service systems.

Facts: The Project will conform to applicable General Plan policies and the National Pollutant Discharge Elimination System (NPDES) permits. The proposed mitigation measures included in the EIR, Section K would reduce runoff impacts to a less than significant level. Mitigations for site-specific design including, sizing of the new storm drain lines will be completed at the Planned Development Permit stage as development is proposed on specific parcels. The design of public facilities will be in accordance with current City of San José standards for capacity, materials and installation. Reviews and approvals from the City Public Works Department, Transportation and Development Division, and the City Building Department are required for development. These mitigation measures have been adopted by the City and will reduce impacts to a less than significant level.

Energy-Specific Project and Cumulative

Significant Impact: The project would provide a mix of uses on the site and would increase housing near employment centers, and therefore, could lead to some reduction in transportation-related energy consumption. However, the proposed development would result in a substantial increase in energy usage on the Project site.

Findings: Changes or alterations have been required in or incorporated into the project that mitigate or avoid significant effects on the environment related to energy usage. Such changes or alterations are within the responsibility and jurisdiction of the City and are not the responsibility of DTSC. Such changes have been incorporated into the project by the City that mitigate or avoid the significant effects to energy.

Facts: DTSC's corrective action project is for characterizing and managing contaminated soil that may be encountered during building demolition and earthwork activities at specific locations during site redevelopment. Development parcels will already be disturbed by building demolition and other City-related Project activities when the corrective action project is implemented. However, in the event soil excavation is necessary to remove contaminated soil under the CMS Report in order to meet Remedial Action Objectives (RAOs), measures to reduce impacts to energy will be included.

Measures have been included in the Project findings, Resolution No. 72772, Section XI.A.2 adopted by the City for conformance with California Administrative Code, title 24,

pertaining to energy efficiency and implementation of relevant General Plan policies of the EIR, Section L that will reduce energy impacts to a less than significant level.

The Planning Director may select measures as conditions of PD Permit issuance to reduce Project impacts to less than significant levels. Among the mitigation measures are the following: incorporating principles of solar design, installing reflective cool roofs, and using the U.S. Green Building Council's Leadership in Energy and Environmental Design Rating System for rating buildings.

For construction, idling of construction vehicles shall be avoided to reduce fuel consumption, emission, and noise. DTSC's CMS Report complies with mitigation measures identified in the EIR to lessen the impacts to energy due to the Project, and energy impacts would be reduced to a less than significant level.

Section II

Significant Unavoidable Adverse Impacts that Cannot be Mitigated to Below the Level of Significance

In accordance with Section 15093 of the state CEQA Guidelines, DTSC has determined that the environmental benefits of the corrective action project outweigh the unavoidable adverse environmental risks. The EIR determined that the Project is not expected to result in significant impacts to agriculture, population and housing, recreation, public services, and geology and soils as a result of Project implementation. The EIR identified and discussed significant impacts to land use, hydrology and water quality, biological resources, cultural resources, hazards and hazardous materials, transportation, air, noise, visual/aesthetics, utilities and service systems, energy, and cumulative Project effects that are expected from Project implementation. By implementing the mitigation measures specified in the EIR, impacts to land use, archaeological resources, hazards and hazardous materials, hydrology and water quality, noise, energy, and utilities and service systems will be mitigated to below the level of significance. Project-specific and cumulative impacts to air quality, Project-specific and cumulative impacts to trees, Project-specific and cumulative impacts to cultural resources (historical buildings), Project-specific and cumulative traffic impacts, Project-specific and cumulative air quality impacts, Project-specific and cumulative visual and aesthetic impacts, cumulative temporary construction-related noise impacts cannot be mitigated to a less than significant level by feasible changes or alterations to the Project. Considering the significant and unmitigated impacts, DTSC found that the corrective action project for the investigation, sampling, and excavation of contaminated soils does not have a significant impact on the foregoing unmitigated impact areas.

ADVERSE ENVIRONMENTAL RISKS

Biological Resources:

Significant Impact Trees: The Project could result in the removal of up to 1,023 ordinance-sized trees and 4,514 non-ordinance-size trees.

Findings: DTSC's corrective action project is for characterizing and managing contaminated soil that may be encountered during building demolition and earthwork activities at specific locations and other locations where contamination is suspected during site redevelopment. Development parcels will already be disturbed by building demolition and other City-related Project activities when the corrective action project is implemented.

Changes or alterations have been required in or incorporated into the Project that avoid or mitigate the significant effects on the environment related to trees to the extent possible. Such changes or alterations are within the responsibility and jurisdiction of the City and are not the responsibility of DTSC. Such changes have been adopted by the City and incorporated into the Project that mitigate the significant effects on the environment related to trees. Although the Project will incorporate mitigation measures, there are no additional feasible mitigation measures that the City could adopt to reduce the impact to on-site tree resources to a less than significant level. This impact, therefore, remains significant and unavoidable. A Statement of Overriding Considerations has been prepared to address the significant impacts to biological resources (trees).

Facts: According to the EIR, section D, Biological Resources, prior to approval of a PD Permit for any phase of development on the Project site, a comprehensive tree survey for the parcel(s) being developed shall be required. The site design and PD Permit approval shall incorporate preservation of existing trees to the maximum extent practicable. In locations where preservation of existing trees is not feasible due to site constraints, relocation and replanting of significant existing trees shall be incorporated into the project where feasible and appropriate to the satisfaction of the DPBCE. Non-orchard trees to be removed as part of the project shall be replaced at prescribed ratios.

Cultural Resources (Historical Buildings)

Significant Impact: The Project would demolish or substantially alter eight of the nine historical buildings which contribute to a potential historic district on the site (buildings

001, 005, 006, 007, 010, 013, 014, 015). Therefore, the Project would result in significant impacts to a historic resource.

Findings: DTSC's corrective action project is for characterizing and managing contaminated soil that may be encountered during building demolition and earthwork activities at specific locations during Project site redevelopment. Development parcels will already be disturbed by building demolition and other City-related Project activities when the corrective action project is implemented.

Changes or alterations have been required in or incorporated into the project that avoid or mitigate the significant effects on the environment related to cultural resources (historical buildings). Such changes or alterations are within the responsibility and jurisdiction of the City and are not the responsibility of DTSC. Such changes have been adopted by the City and incorporated into the Project that mitigate the significant effects on the environment related to cultural resources to the extent possible. A Statement of Overriding Considerations has been prepared to address the significant impacts to Cultural Resources (historical buildings).

Facts: DTSC's corrective action project is part of the larger redevelopment Project that the City has decided to undertake. As mentioned above, the Project area will be disturbed when DTSC's corrective action project is implemented. Mitigation measures adopted by the City will require that specific conditions be met prior to issuance of a Master PD Permit or any individual PD Permits for demolition of buildings within the potential historic district. Other requirements for documentation and salvage must also be met.

Transportation

Significant Impacts: The Project would result in significant impacts associated with increased congestion at the following City intersections:

1. US Highway 101/Blossom Hill Road
2. US Highway 101/Silver Creek Valley Road
3. SR 85/Great Oaks Boulevard
4. The Project would result in significant impacts from increased congestion on the northbound U.S. 101 freeway segment between Blossom Hill Road/Silver Creek Valley Road and Hellyer Avenue.

5. Because of projected queuing and potential safety issues associated with ramp metering and added traffic from the Project, a significant impact was also identified at the Cottle Road corridor and the SR 85/Cottle Road interchange.
6. The Project would result in significant impacts to two Congestion Management Program (CMP)-designated regional intersections: US 101 and Blossom Hill Road and US 101 and Silver Creek Valley Road.

DTSC's corrective action project is for characterizing and managing contaminated soil, including contaminated soil transportation off site that may be encountered during building demolition and earthwork activities at specific locations during site redevelopment. Changes or alterations have been required in or incorporated into the project that avoid or mitigate the significant effects on the environment related to transportation. Such changes or alterations are within the responsibility and jurisdiction of the City and are not the responsibility of DTSC. Such changes have been adopted by the City and incorporated into the Project that mitigate the significant effects on the environment related to transportation. A Statement of Overriding Considerations has been prepared to address the significant impacts to transportation as listed above.

Facts: The EIR, Section G, Transportation, provides mitigation measures in order to mitigate Project effects to the extent possible for traffic generated by residential and retail development uses. Included as a condition of the Project approval are reconfiguration and improvements, development Project fees payable to the City, and implementing General Plan policies.

With respect to construction, the EIR concluded that temporary construction traffic would not result in significant impacts. DTSC's project will not exceed the 100 peak hour trips estimated in the EIR. Additionally, DTSC's corrective action project takes place during the construction/demolition phase, is temporary and time-limited, and will not significantly contribute to traffic impacts.

Air Quality (Regional)

Significant Impact:

The proposed General Plan amendment would allow a significant number of additional residential units not reflected in the 2000 Clean Air Plan (CAP) of the BAAQMD projections and would place housing in south San Jose. This would contribute to existing patterns of congestion. The development project's regional air quality impacts

would remain significant after implementing mitigation measures.

Findings: The Project emissions would exceed the threshold of significance for reactive organic gases (ROG), nitrogen oxides (NOx), and particulate matter less than 10 microns in diameter (PM10). The Implementation of General Plan Policies (mitigation measures) identified by the Bay Area Air Quality Management District (BAAQMD) for air, energy, and transportation to reduce emissions at the Planned Development (PD) Permit stage to the satisfaction of the DPBCE and specific measures for bicycle lanes, sidewalks, and other measures would reduce potential impacts to air quality for the General Plan Amendment for the Project to the extent feasible, in accordance with the guidance provided by the BAAQMD. Regional air quality impacts would exceed ROG, NOx, and PM10 thresholds due to traffic increases. However, impacts to air quality from the General Plan amendment for the Project for CAP 2000 projections and regional air quality impacts would remain significant, adverse and unavoidable.

The BAAQMD measures have been incorporated into the Project as conditions of approval would reduce impacts to air quality. However, the proposed General Plan amendment would exceed the population projections in the 2000 CAP and contribute to existing patterns of traffic congestions and consequent air emissions. There are no feasible mitigation measures that the City could impose as conditions of Project approval that would reduce this impact to less than significant levels. Therefore, the proposed General Plan amendment would result in a significant and unavoidable regional air quality impact. DTSC's remediation complies with mitigation measures identified by the EIR to lessen the impacts to air quality due to the Project construction and demolition phase discussed earlier.

The City has required or incorporated into the project changes or alterations to mitigate or avoid significant effects on the environment, related to air quality impacts for the General Plan Amendment and regional air quality from the specific Development Project, to the extent feasible. A Statement of Overriding Considerations has been prepared to address the significant impacts to Air Quality as detailed above.

Facts:

A project of this magnitude may generate environmental impacts to the CAP projections for the General Plan and the specific Development Project's regional air quality. The City has identified in Section H, Air Quality, of the EIR, mitigation measures that would reduce the potential air quality impacts from both the General Plan Amendment Project and specific Development Project phases. However, regional air quality emissions of ROG, NOx, and PM10 may be a significant, unavoidable, adverse impact of the Project.

DTSC's corrective action project is a part of the larger General Plan Amendment Project that the City has decided to undertake. Elements of the CMS Report comply with mitigation measures identified by the EIR that are designed to lessen air quality impacts due to construction as discussed previously in Section I. The CMS Report complies with these provisions, which require various dust and emissions controls.

Visual and Aesthetics (Views)

Significant Impact: The proposed future development on the site would result in a significant change in visual character on the site, and to the extent that existing views of the hills are obscured, could block views of scenic resources.

Findings:

Changes or alterations have been incorporated into the project that mitigate or avoid the significant effects on aesthetics. Such changes or alterations are within the responsibility and jurisdiction of the City and are not the responsibility of DTSC. Such changes have been adopted by the City and incorporated into the project that mitigate or avoid the significant effects on the environment related to visual/aesthetics. A Statement of Overriding Considerations has been prepared to address the significant impacts to Visual and Aesthetics.

Facts:

These changes are the responsibility of the City to implement pursuant to the mitigation monitoring plan adopted by the City. The EIR, Section J, includes the mitigation measures for future development on the site. Future development on the site shall conform to landscaping, design, setbacks, and height requirements in the City's adopted *Residential, Commercial, and Industrial Design Guidelines*. Consistency with these guidelines will be specifically evaluated for proposed development at the Planned Development Permit stage. Future development allowed under the proposed General Plan amendments could result in a significant change in visual character on the site as well as blockage of views of scenic resources. This impact is significant and unavoidable. DTSC's corrective action project will occur during the demolition/construction phase and will not affect future development at the site.

Significant Cumulative Impacts

Significant Impact: The Project would result in significant and unavoidable project-

specific and cumulative impacts to the following:

Biological resources (trees),
Cultural resources (historical buildings),
Transportation traffic impacts,
Air quality impacts,
Visual and aesthetic impacts, and
Temporary construction-related noise impacts.

These impacts cannot be mitigated to a less than significant level by feasible changes or alterations to the Project. Feasible mitigation measures have been discussed previously for each environmental medium above.

Cumulative Visual and Aesthetic Impacts (Views): Project implementation, in conjunction with other anticipated future development, would change the visual character of the site and would obstruct views of the eastern foothills, contributing to significant cumulative visual and aesthetic impacts. There are no feasible measures that could reduce these significant cumulative impacts to a less than significant level. Consequently, these impacts remain significant and unavoidable.

Findings: See below.

Facts: Development from the City's approval and implementation of all anticipated future development will result in the loss of approximately 2,000 to 3,000 acres of visual open space resources within the City. Each anticipated future development would result in a visual/aesthetic impact to varying degrees that would block existing views of the scenic hillsides and mountains around the Santa Clara Valley.

Cumulative Transportation Impacts: Project implementation, in conjunction with other anticipated future development, would contribute to increasing congestion across three special subarea screenlines, increases to vehicle miles traveled (VMT) and vehicle hours traveled (VHT) within the City's Sphere of Influence, and increase in peak hour congestion on presently congested roadway links.

Findings: See below.

Facts: Given the magnitude of cumulative traffic impacts, no feasible mitigation was identified that would reduce the impacts to a less than significant level. The combined impact of approval and implementation of all the General Plan amendments proposed, including those proposed by the Project, would be a significant adverse cumulative

increase in peak direction volumes traffic.

Air Quality (Regional): The cumulative projects would add approximately 43,300 new dwelling units and approximately 102,000 additional jobs to the holding capacity of the City's General Plan. The addition of 2,930 residential units would not be consistent with the assumptions of the 2000 CAP. The Project would result in a significant impact on regional air quality in the Bay Area.

Findings: See below.

Facts: There are no specific measures identified that would reduce the cumulative air quality impacts to a less than significant level. The Project includes all feasible measures to reduce long term air quality impacts. There are no additional feasible mitigation measures that the City could impose to reduce this impact to a less than significant level.

Noise (Demolition and Construction): Project demolition and construction in conjunction with construction of other anticipated future development, particularly as anticipated at other project sites near the Project vicinity would result in cumulatively considerable temporary construction noise impacts.

Findings: See below.

Facts: Projects evaluated for cumulative construction noise impacts are proposed throughout the urbanized areas of the City. Implementing these projects will involve substantial construction within or adjacent to existing neighborhoods and businesses. Construction may be ongoing in some areas for years and include construction noise from demolition, grading, power tools, heavy truck traffic, pile driving, and so forth. This will create impacts on some neighborhoods for extended or repeated periods of time. Some projects are close to each other, resulting in cumulatively considerable construction noise impacts.

Findings - All Cumulative Impacts: Findings: There are no additional feasible measures that could reduce these significant cumulative impacts to a less than significant level. Consequently, these impacts remain significant and unavoidable. Changes or alterations have been incorporated into the project that mitigate the significant cumulative impacts to biological resources (trees), cultural resources (historical buildings), transportation traffic impacts, air quality impacts, visual and aesthetic impacts, and temporary construction-related noise impacts to the extent possible. Such changes or alterations are within the responsibility and jurisdiction of the

City and are not the responsibility of DTSC. These changes have been adopted by the City. A Statement of Overriding Considerations has been prepared to address the cumulative significant impacts to biological resources (trees), cultural resources (historical buildings), transportation traffic impacts, air quality impacts, visual and aesthetic impacts, and noise impacts (construction-related).

Cumulative Facts Summary: DTSC's corrective action project is part of the larger redevelopment Project that the City has decided to undertake. As mentioned above, the Project area will be disturbed when DTSC's corrective action project is implemented. In addition, DTSC's corrective action project is temporary and time-limited and will not significantly contribute to project specific or cumulative Project impacts.

DTSC's corrective action project will result in beneficial cumulative effects because contamination sources will be removed. Mitigation measures adopted by the City will require that specific conditions be met prior to issuance of a Master PD Permit or any individual PD Permits for various types of redevelopment projects. Mitigation measures that reduce Project impacts to the extent possible have been incorporated by the City.

OVERRIDING CONSIDERATIONS

DTSC has determined that the environmental benefits of implementing the project outweigh and override the unavoidable adverse effects of the corrective action project. DTSC has decided to implement the corrective action project and will mitigate the air impacts described above to the extent feasible. Although the corrective action project contains measures to control dust emissions, the EIR did not identify mitigation measures to reduce impacts from ROG, NOx, and PM10 to less than significant levels. Cumulative and specific redevelopment Project impacts to biological resources, cultural resources, transportation, air, noise and visual/aesthetic resources will be mitigated to the extent possible as previously described, but will remain significant and unavoidable.

The redevelopment Project of the City consists of demolition, construction, and operational phases. The redevelopment Project area presents an opportunity to characterize and remove chemically impacted soils that may exist beneath current structures or in exposed areas. These potentially hazardous soils will be exposed during demolition and construction and could pose a hazard to construction workers and future residents or building occupants or park occupants. Contaminated soils removal under the CMS Report will provide greater protection of public health and is an overriding consideration warranting approval of the corrective action project. The environmental benefits related to this corrective action outweigh temporary impacts to

the resources listed above from the various environmental concern areas during demolition and construction. As mentioned above, DTSC's corrective action project is temporary and time-limited and will not significantly contribute to project specific or cumulative Project impacts.